In the present case the property was not produced before the Court. It was very wrongly disposed of by the authorities before the case came for hearing, and I think it is stretching the section too far if one says that because a person refuses to sell one tin his whole stock has been used for the commission of an offence or that an offence has been committed regarding it.

Conviction Quashed.

T. M. R. SAMI v. SIM TENG CHEW.

[Appellate Juris. (Murray-Aynsley, C.J.) June 17, 1947]

Crown Lands Encroachments Ordinance — Unlawful occupation of Crown Land — Whether service of a notice is necessary before steps could be taken for removal of trespasser — Crown Lands Rules, 1923, Rule 30.

In this case the appellant was summoned for being in unlawful occupation of Crown Land. It appeared that a temporary occupation licence covering the land in question had been issued to one Veerapathram but that later this Veerapathram had parted with his interest in the land to the appellant. The temporary occupation licence issued to Veerapathram had expired. The question was whether steps could be taken for the removal of the appellant without service of a notice under rule 30 of the Crown lands Rules 1923.

Held, (1) that Rule 30 of the Crown Lands Rules 1923 could only be applied to the licensee himself and his servants and agents but not to assignees, who, the licence being not assignable, were trespassers, (2) that in this case on the facts the licensee had parted with his interest to the land to the appellant and no notice under Rule 30 of the Crown Lands Rules was necessary.

APPEAL from Police Court.

S. C. Goho for the Appellant.

C. H. Butterfield (D. P. P.) for the Respondent.

Murray-Aynsley, C. J. : — In this case the appellant was summoned for being in unlawful occupation of Crown land.

It appears that a temporary occupation licence had been issued to one Veerapathram and it had expired.

The question to be decided was whether steps could be taken for the removal of the appellant without service of a notice under rule 30 of the Crown Lands Rules, 1923.

It appears that Veerapathram had carried on a business on the premises in question but before these proceedings were taken he had assigned the business to the defendant. He had further given a power of attorney to the appellant. It was contended that as such attorney of Veerapathram he was entitled to the protection given by r. 30. It was contended as a matter of fact that Veerapathram had continued to reside on the premises.

I cannot find an express finding of fact by the Magistrate on this point, but I think it must be inferred from statements made by the appellant to officers of the Land Office that this was not the case.

The construction of rule 30 is not without difficulty. If it were construed quite literally, it would mean that once a temporary occupation licence had been granted no trespasser on the land in question could be removed unless the required notice were served on him. "Any person" must therefore be given a restrictive interpretation, that is, primarily to that of the licensee himself, but it would also include his servants and agents. On the other hand a purported assignee is not an agent of the assignor, and if anyone held land as assignee, as the licence is not assignable, he would be a mere trespasser.

The question there is to decide is whether in point of fact the relation of principal and agent existed between Veerapathram and the appellant. It appears to be clear from the evidence that Veerapathram had parted with all his interest in the premises and that the appellant was in no sense his agent. The power of attorney was obviously a mere device to assign the licence, which both parties knew could not be done. It follows, therefore, that the appellant was not entitled to the protection of Rule 30, and the appeal must be dismissed.

Appeal Dismissed.

STRAITS SETTLEMENTS REPORTS.

MOHAMED FAHMY v. HAPPY WORLD LTD.

[Appellate Civil Jurisdiction (Trusted C.J., F.M.S., Aitken Ag. J.A. and Worley, J.) January 7, 1942]

Courts Ordinance, Section 24 — Functions of a Court of Appeal — Credibility of witness — Appeal.

This was an appeal from the decision of the learned Chief Justice of the Straits Settlements dismissing the claim of the appellant in this case for damages for breach of contract. On the hearing of the appeal counsel for the appellant and for the respondents addressed the Court on the functions of a Court of Appeal,

Held, (1) that where the credibility of a witness's oral testimony is concerned, the Court of Appeal will be slow to differ from the trial Judge, unless it appears that his view of that testimony was contrary to facts as to which there could be no doubt; (2) that where however it is clear that the trial Judge believed or disbelieved a witness, not because of the impression which that witness made upon him when giving his evidence, but because of inferences which the Judge drew from other circumstances, the Court of Appeal is in as good a position to draw those inferences as was the trial Judge, and it is its duty to consider them; (3) that in this case the learned Chief Justice had decided the case upon the impression which the witnesses made upon him when they gave their oral evidence and that therefore the Court of Appeal should not interfere with the decision.